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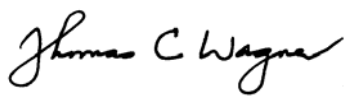
Securities & Exchange Commission

RE: File No. SR-FINRA-2007-021
Release No. 34-57497
Notice of Filing of Proposed Rule Change and Amendment No. 1 Relating to Amendments to the Code of Arbitration Procedure for Customer Disputes and the Code of Arbitration Procedure for Industry Disputes to Address Motions to Dismiss and to Amend the Eligibility Rule Related to Dismissals

As an attorney in private practice since 1985 and one who is both an arbitrator and a mediator for securities disputes, I support the proposed changes pertaining to Motions to Dismiss filed in FINRA arbitration proceedings. I have always considered a Motion to Dismiss brought in an arbitration proceeding to be draconian in nature given the limitations and purposes of the arbitration forum. Motions to Dismiss brought in arbitration proceedings have few of the procedural safeguards which govern similar motions filed in state or federal court. Discovery, in FINRA arbitrations, is limited to document discovery. There are no depositions and any hearing on a Motion to Dismiss will be conducted by telephone conference, without the opportunity for in-person testimony and argument. Most importantly, a claimant whose arbitration is dismissed on a pre-hearing Motion to Dismiss has virtually no right of appeal when compared to his civil court counterpart. Regardless of the above limitations, Motions to Dismiss in arbitration proceedings have become increasingly common over the past 25 years and I consider the development of such "motion practice" to run counter to the original goal of providing the respective parties with his/her "day in court" in a fair, efficient and timely manner. It is impossible to explain to a claimant/client whose case has been dismissed without a full, in-person hearing, and without opportunity to cross-examine opposing parties and witnesses, how a pre-arbitration dismissal of his/her case is consistent with the original goals of that forum.

While it is true that the proposed amendments codify the kind of "motion practice" I do not believe is appropriate for the arbitration forum they do represent an attempt to limit the use of such motions in a manner which will clarify and – hopefully – reduce the instances of their use and misuse in this forum. The proposed rule should be approved.

Sincerely,



Thomas C. Wagner